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EXAMINER

CHOW, JEFFREY J

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/677,164
Filing Date: September 30, 2003
Appellant(s): GUTKOWSKI ET AL.

MAILED

AUG 06 2007

Technology Center 2600

Jack H. McKinney
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 13 June 2007 appealing from the Office action mailed 20 March 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Geigel et al. (US 2002/0122067)

Venable (US 6,738,154)

Nakane (US 6,999,207)

(9) Grounds of Rejection

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 5, 24 – 28, 47, 53, 54, and 57 are rejected under 35 U.S.C. 102(e) as being anticipated by Geigel (US 2002/0122067).

Regarding independent claims 1, 24, 47, and 57, Geigel discloses the system 124 takes as input a collection of images where the Page Creator Module 126 is responsible for assigning each image to an album page (paragraph 77 and Figures 7, 19 - 38), which reads on the claimed detection module operable to identify, within the digital image, a set of digitized objects. Geigel also discloses the system 124 has the Image Placement Module 132 that positions the images on each individual page along with other images (paragraph 77 and Figure 7), which reads on the claimed adjustment module operable to adjust at least one digitized object within the digital image so that the adjusted digitized object at least substantially conforms to a prescribed state.

Regarding dependent claims 3 – 5 and 26 – 28, Geigel discloses the Albuming Automation System (AAS) 2 receives input 4 from one of a variety of image sources where the refined image information is coupled to the automatic page layout process 52 and where the page layout data is coupled to an output format module 54 and where the album page is rendered for

display, printing, or transfer to any another medium (paragraphs 56 and 57 and Figure 1), which reads on the claimed instruction for generating the digital image of a set of objects, each of the set of digitized objects being a digital replica of one of the set of objects, which reads on the claimed instructions for identifying and adjusting are executed automatically upon generation of the digital image, and which reads on the claimed instructions for automatically instructing that the digital image be produced upon execution of the instruction for identifying and adjusting.

Regarding dependent claims 2 and 25, Geigel discloses Figures 19 – 22, 33 and 34, which reads on the claimed instructions for adjusting affect one or more of a size, a location, and an orientation of the digitized object.

Regarding dependent claim 53 and 54, Geigel discloses the AAS recalls the user preferences 12 and apply them to new batches of images and the AAS detects digital images and adjust digital images based on user preferences 12 and the AAS outputs from the automatic page layout module 52 (paragraphs 56 and 57 and Figure 1), which reads on the claimed interface module operable to direct the detection module and the adjustment module to perform their functions upon generation of the digital image and the claimed interface module operable to send instructions for producing the digital image once the detection module and the adjustment module have performed their functions.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 – 23, 29 – 46, and 48 – 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geigel (US 2002/0122067) in view of Venable (US 6,738,154).

Regarding dependent claims 6 – 19, 22, 29 – 42, 45, 48, 50, and 51, Geigel discloses Figures 19 – 22, 33 and 34 and user preferences 12 being stored in a user preference database 20 and are subsequently decoded 24 for use in processing the user preferences along with the image information (paragraph 56 and Figure 1). But Geigel did not explicitly disclose an alignment grid, snapping line, edge lines, alignment edge, rotation, or anything that deals with aligning images to a grid like pattern, but Geigel discloses the use of grids to provide unity among the set of digital objects (paragraph 84 and Figure 27) and examples of digital objects be repositioned, aligned, rotated (Figures 27 – 29). Venable discloses images being scanned at the same time where the system recognizes the digital objects (column 5, line 58 – column 6, line 12). Venable also discloses the system detecting separate photographs that were scanned (column 6 lines, 13 – 31). Venable also discloses the system detecting edges for rotation (column 10 lines 5 – 53). Venable also discloses a grid and the scanned images being fashioned to a grid-like layout (column 12, lines 40 – 49 and Figures 8 and 10 - 12). It would a been obvious for one of ordinary skill in the art at the time of the invention to modify Geigel's system with Venable's teachings of aligning and snapping digital objects with edges that are detected to an alignment grid by rotating and positioning the digital objects to the alignment grid to automatically detect digital objects, to automatically detect edges within the digital objects that are substantially perpendicular to each other, to automatically determine the angle of rotation of the digital objects to align the digital objects to an alignment grid, to automatically snapping and position the digital

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objects once the angle of rotation of the digital objects have been determined, to display the scanned digital objects in a grid-like fashion, and to scan multiple images to be rotated, snapped, and align to a determined template that is defined by the user, which improves efficiency and requires less time to align images on the scanner by allowing users to scan large amount of digital objects at the same time and allowing the system to automatically align the digital objects to the desired template defined by the user with little or no user interactions.

Regarding claims 20, 21, 43, 44, and 52, Geigel discloses digital objects being resized and positioned so that other digitized objects can span the dimension of the digital image and where the digital image is the album page or the layout of the digital objects, (Figures 27 – 29 and 33 – 37) and Geigel discloses Figures 19 – 22, 33 and 34 and user preferences 12 being stored in a user preference database 20 and are subsequently decoded 24 for use in processing the user preferences along with the image information (paragraph 56 and Figure 1).

Regarding independent claims 23 and 46 and dependent claim 49, Geigel discloses the system 124 takes as input a collection of images where the Page Creator Module 126 is responsible for assigning each image to an album page (paragraph 77 and Figure 7), which reads on the claimed instruction for identifying, within a digital image, a set of digitized objects. But Geigel did not explicitly disclose an alignment grid, snapping line, edge lines, alignment edge, rotation, or anything that deals with aligning images to a grid like pattern, but Geigel discloses the use of grids to provide unity among the set of digital objects (paragraph 84 and Figure 27) and examples of digital objects be repositioned, aligned, rotated (Figures 27 – 29). Venable discloses images being scanned at the same time where the system recognizes the digital objects (column 5, line 58 – column 6, line 12). Venable also discloses the system detecting separate

photographs that were scanned (column 6 lines, 13 – 31). Venable also discloses the system detecting edges for rotation (column 10 lines 5 – 53). Venable also discloses a grid and the scanned images being fashioned to a grid-like layout (column 12, lines 40 – 49 and Figures 8 and 10 - 12). It would a been obvious for one of ordinary skill in the art at the time of the invention to modify Geigel's system with Venable's teachings of aligning and snapping digital objects with edges that are detected to an alignment grid by rotating and positioning the digital objects to the alignment grid to automatically detect digital objects, to automatically determine the angle of rotation of the digital objects to align the digital objects to an alignment grid, to automatically snapping and position the digital objects once the angle of rotation of the digital objects have been determined, to display the scanned digital objects in a grid-like fashion, and to scan multiple images to be rotated, snapped, and align to a determined template that is defined by the user, which improves efficiency and requires less time to align images on the scanner by allowing users to scan large amount of digital objects at the same time and allowing the system to automatically align the digital objects to the desired template defined by the user with little or no user interactions.

Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geigel (US 2002/0122067) in view of Nakane (US 6,999,207).

Regarding independent claim 55 and dependent claim 56, Geigel discloses the system 124 takes as input a collection of images where the Page Creator Module 126 is responsible for assigning each image to an album page (paragraph 77 and Figures 7, 19 - 38), which reads on the claimed detection module operable to identify, within the digital image, a set of digitized objects.

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Geigel also discloses the system 124 has the Image Placement Module 132 that positions the images on each individual page along with other images (paragraph 77 and Figure 7), which reads on the claimed adjustment module operable to adjust at least one digitized object within the digital image so that the adjusted digitized object at least substantially conforms to a prescribed state. Geigel also discloses the album page to be rendered for display, printing, or transfer to any another medium (paragraph 56), which reads on the claimed print engine operable to produce the digital image on a media sheet. However, Geigel did not explicitly disclose a scan engine nor did Geigel explicitly disclose an automatic process from the scan engine to the print engine, but Geigel did disclose the use of scanned images (paragraph 55). Nakane discloses a system that scans a plurality of photos, where the photos are automatically detected on the side of the copying machine, so that the photos are automatically arranged in a predetermined layout to be printed out. It would have been obvious for one of ordinary skill in the art at the time of the invention to combine Geigel's system with Nakane system of scanning, auto-arranging, auto-aligning, and auto-printing photo's after auto-arranging and auto-aligning to accustom with user preferences in arrangements and alignments of photos in a scanned image with little user interactions or without user interactions after input of photos have been received or in an automated system as described above, which provides users efficiency and a time saving automated system to scan and print bulk images with the desired user preferences.

(10) Response to Argument

Applicant's arguments with respect to claims 1 – 57 have been fully considered but they are not persuasive.

With respect to claims 1, 24, 47, and 57, applicant argues Geigel does not teach identifying images within a given album page and then adjusting at least one of those images to a prescribed state. However, applicant agrees that “the function of Geigel’s Image Placement Module is to position each of those images on the album page to which that image has been assigned” and “once the images are placed on a given album page, they are not later *identified* or adjusted” [emphasis added]. Therefore, by applicant’s acknowledgement, Geigel does teach identifying images within a given album as applicant admits Geigel does teach positioning *each* image on the album page. In other words, in order for Geigel’s system to position each image on the album page, each image is identified for positioning.

Claims 2 – 22 stand and fall together with claim 1.

Claims 25 – 45 stand and fall together with claim 24.

Claims 48 – 54 stand and fall together with claim 47.

Regarding claim 23, applicant states that “claim 23 makes it clear that the steps of identifying, rotating, and positioning, are performed upon the generation of the digital image” [no emphasis added]. Applicant states that Merriam-Webster defines the term “upon” to mean “immediately following on: very soon after.” Webster’s II New Riverside University Dictionary defines “upon” as “on”. Webster’s II Riverside University Dictionary defines “on”, as best fit the context for virtual usage, as, “used to indicate occurrence at a given time”. However, Webster states the usage for “*On* and *upon* are often interchangeable when indicating location in

space as in *a bird sitting on (or upon) a branch*. However, when the relationship is not spatial, *upon* often cannot substitute for *on*.” Since applicant is arguing the definition of “upon”, applicant is putting limitations into the claims that are not expressed in the claims. Applicant is also putting limitations into the claims that are not taught by the original specification.

Applicant argues that Geigel does not mention identifying images within an album page following the generation of the album page. However, claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geigel in view of Venable. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). However the claim limitation states, “the steps of identifying, rotating, and positioning, are performed upon the generation of the digital image”. Geigel discloses the use of grids to provide unity among the set of digital objects (paragraph 84 and Figure 27) and examples of digital objects be repositioned, aligned, rotated (Figures 27 – 29) and since the digital objects are being repositioned, aligned, and rotated, the digital objects have been identified. Since Geigel’s system performs methods of positioning each image in the album, identification of which image to position occurs. Therefore Geigel’s system positions each image in the album page after (upon) identifying each image for positioning. Venable is also relied upon for claim 23. Venable discloses images being scanned at the same time where the system recognizes the digital objects (column 5, line 58 – column 6, line 12) and detecting edges for rotation to align on a template (column 10 lines 5 – 53 and column 12, line 64 – column 13, line 11). Venable also teaches positioning each scanned image after (upon) identifying each scanned image.

Claim 29 – 45 stand and fall together with claim 24.

Claim 46 stands and falls together with claims 1 and 23. Applicant argues that Geigel does not teach identifying, within a digital image, a set of digitized objects or rotating, positioning, or otherwise adjusting object within a distinct digital image. Applicant also states that Veneble is silent on these points. Geigel discloses the use of grids to provide unity among the set of digital objects (paragraph 84 and Figure 27) and examples of digital objects be repositioned, aligned, rotated (Figures 27 – 29). Venable discloses images being scanned at the same time where the system recognizes the digital objects (column 5, line 58 – column 6, line 12), detecting separate photographs that were scanned (column 6 lines, 13 – 31), and detecting edges for rotation to align on a template (column 10 lines 5 – 53 and column 12, line 64 – column 13, line 11).

Claim 48 – 52 stand and fall together with claim 47.

Claims 55 and 56 stand and fall together with claim 1. Applicant argues that Geigel does not teach identifying, within a digital image, a set of digitized objects or rotating, positioning, or otherwise adjusting object within a distinct digital image. Applicant also states that Veneble is silent on these points. Geigel discloses the use of grids to provide unity among the set of digital objects (paragraph 84 and Figure 27) and examples of digital objects be repositioned, aligned, rotated (Figures 27 – 29). Venable discloses images being scanned at the same time where the system recognizes the digital objects (column 5, line 58 – column 6, line 12), detecting separate photographs that were scanned (column 6 lines, 13 – 31), and detecting edges for rotation to align on a template (column 10 lines 5 – 53 and column 12, line 64 – column 13, line 11).

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

However, attached is "Webster's II New Riverside University Dictionary", 1984, pgs, 820 and 1268 for the definitions of "upon" and "on".

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jeffrey J. Chow



Conferees:

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